

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 463/ 1989.
TAP No.

DATE OF DECISION September 27, 1989.

Pratap Chandra Misra _____ Applicant (s)

In person. _____ Advocate for the Applicant (s)

Delhi Administration _____ Versus Respondent (s)

Shri M. M. Sudan _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman (J).

The Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

The applicant, who belongs to the Delhi and Andaman and Nicobar Islands Civil Service (for short DANI Civil Service), has filed this application under Section 19 of the Administrative Tribunals Act, 1985 against Delhi Administration (Services I Department) Order No. F.38/1/88-S. I, dated 2.2.1988, by which he was ordered to be transferred from the post of Deputy Director Social Welfare to the post of Joint Director (Agricultural Marketing) and has prayed that the respondent be directed -

- (1) to give a cadre post commensurate with seniority;
- (2) to pay deputation allowance with effect from 2.2.88 as per normal rules;
- (3) to pay Rs. two lakh compensation for damages to reputation on account of degradation, demoralisation, humiliation and mental torture or any amount deemed fit be awarded against the respondent to open the eyes of the Govt. so that authorities may not exercise their malafides with impunity in future; or any

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other order deemed necessary in the interest of justice be passed.

2. The case of the applicant, in brief, is that he belongs to 1974 batch of DANI Civil Service and his transfer to the post of Joint Director (Agricultural Marketing) vide impugned order dated 2.2.1988 (Annexure I to the application) is against the DANI Civil Service Rules, 1971, as the post to which he has been transferred is an ex-cadre post. He has also pleaded that the functions assigned to him on this post are not the full functions which go with this post and that the duties assigned to him on this post have hardly any work and that he is being humiliated by the assignment of certain duties attached to this post to a junior officer in that office. He has also stated that his representation dated 20.7.88 (Annexure III to the application) addressed to the Chief Secretary, Delhi Administration, Delhi, in which he had requested for his posting to a cadre post commensurate with the seniority and his follow up of his representation with the authorities and the Minister concerned have not resulted in any reply or suitable action.

3. The case of the respondent, which is the Delhi Administration through its Chief Secretary, in brief, is that the DANI Civil Service Rules do not debar the administration from posting the officer to an ex-cadre post and that the applicant was posted to an ex-cadre post for administrative reasons in public interest. It is also stated that it is not a case of deputation and no deputation allowance is payable. The allegations in the application regarding humiliation etc. to the applicant and non-assignment of full duties of the post to him have also been denied.

4. In the rejoinder-affidavit, the applicant has generally reiterated his contentions as contained in the application; has relied on the judgement of Delhi High Court in the case of PREM PARVEEN Vs. UNION OF INDIA AND ORS. (1973 (2) SLR 659) and on the judgement of the Jabalpur Bench of the Central Administrative Tribunal in the case of

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GHAN SHYAM Vs. UNION OF INDIA (SLJ 1987 (3) CAT 673) in T.A. 83/87. He has also tried to enlarge the scope of application by mentioning his transfer from the post of Joint Director (Agricultural Marketing) to Joint Director (Slums) DDA, vide order dated 11.5.89 and the order dated 11.7.89 modifying the order ibid by which he was posted as Deputy Director (Training) UTCS, but to draw salary against the post of Under Secretary (Land & Building), which amounts to reduction in rank and reduction of salary. In para 9 of his rejoinder-affidavit, he has, therefore, prayed for a status-quo ante as on 16.5.89 and a direction to the respondent to pay regular salary or transfer to a senior cadre post with protection of Rs.300/- special pay or he be given a JAG post on ad-hoc basis. It may be stated here that these new facts and new prayer in the rejoinder-affidavit cannot be considered by us in this application. We also understand that the new transfer orders etc. had been separately challenged by the applicant in another O.A.

5. The first question which arises for adjudication in this case is whether the applicant can be posted to an ex-cadre post or not. Rule 27 of the DANI Civil Service Rules, 1971 provides for posting of a member of the Service and is as below: -

"27. POSTING OF MEMBERS OF THE SERVICE:

Every member of the service allocated to an administration shall, unless he is appointed to an ex-cadre post, or is otherwise not available for holding a duty post owing to the exigencies of public service, be posted against a duty post under the Administration by the Administrator concerned.

A perusal of the above rule makes it very clear that a member of the DANI Civil Service has a right to be posted against a duty post unless he is appointed to an ex-cadre post, or is otherwise not available for holding a duty post owing to the exigencies of public service. (emphasis supplied). Thus, this rule which is a part of the Rules notified under Article

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309 of the Constitution, makes a specific provision enabling the Administration to post a member of the Service to an ex-cadre post. In view of this, the reliance by the applicant on the judgement of the Delhi High Court in PREM PARVEEN Vs. UNION OF INDIA & ORS. (supra) does not help him. In the case before the Delhi High Court, the scope of powers of the President under F.R. 14 and 15 came up for a detailed analysis and the transfer of the petitioner therein to another post in another cadre was held to be without any support in law or rules and hence quashed. In the case before us, there is a specific statutory provision for posting a member of the Service to an ex-cadre post and, therefore, no resort to F.R. 15 is called for. In the other case relied upon by the applicant viz., GHAN SHYAM Vs. UNION OF INDIA (supra), the primary question for adjudication was the transfer of the applicant in administrative interest to another Department under the same employer and his confirmation there without his consent even though he had a lien in another Department. On the question whether the confirmation of the applicant in Medical Department to which he was originally deputed from the Traffic Department for administrative reasons at the instance of the respondent and without asking him to exercise his option for absorption in the Medical Department and without seeking his consent to confirmation in that Department, the Jabalpur Bench of this Tribunal stated that the answer would be in the negative. In the circumstances of that case, it was also mentioned that after his confirmation in the Medical Department, technically he would be deemed to be on deputation to the Traffic Department. The question of deputation allowance was not considered; nor any deputation allowance was awarded for this period of deemed deputation. Thus, this judgement also does not help the applicant.

6. The question whether a Central Government servant can be transferred compulsorily to a post outside the cadre of his own Department or service was considered in detail by

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the Government of India and orders were issued in the Ministry of Home Affairs Memo No. 75/55 Ests(A), dated 24th March, 1955 which has been reproduced from the bottom of page 12 to the middle of page 14 of Chaudri's Compilation of the Civil Service Regulations, Volume 1 (Main Rules) - 13th Edition (corrected upto 1st April, 1986). The object of this Memo was to clarify the legal position and to indicate general considerations to be borne in mind in dealing with individual cases. It was clarified that such a transfer is permissible under F.R. 11 read with F.R. 15 and that the power should be exercised in the public interest with due care. The points for general consideration which had to be kept in mind were also mentioned. These considerations comprise, in brief, the following: -

- (1) The services of the officer are needed in a post outside the parent service or department and it should be usually possible to arrange for his deputation for a limited period.
- (2) Compulsory permanent transfer to and from organised separate services should only be made in cases of proved necessity.
- (3) Other things being equal, the State will get better service from a willing servant than from one who is compelled to carry out the duties of a post against his wishes.
- (4) The legitimate claims and expectations of individual employees should not be ignored.
- (5) A transfer to a distant place may well be a case of serious hardship, especially with a low paid employee.

7. In view of the above discussion, we are of the view that the respondent had a right under the DANI Civil Service Rules to post the applicant to an ex-cadre post without the requirement of obtaining his consent. We would, however, suggest that in view of the period of service which the applicant is stated to have already spent in ex-cadre posts and his general frustration on this account, the respondent should try, as far as feasible in the public

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interest, to post the applicant on a duty post in his cadre. As mentioned above, he has since been transferred from the ex-cadre post about which this application has been filed.

8. The next question which arises for consideration is whether the posting of the applicant to an ex-cadre post is to be treated as a posting on deputation and, if so, whether he is entitled to payment of deputation allowance.

9. C.S.R. Article 77 states that an officer is said to be on deputation when he is detached on special temporary duty for the performance of which there is no permanently or temporarily sanctioned appointment.

10. C.S.R. Article 81 states that 'An officer deputed on special duty may be allowed to draw the pay or salary which he is drawing at the time of his deputation or which he would have drawn from time to time if he had not been so deputed; provided that an officer who while on deputation, is nominated to an appointment outside the regular line, shall not be admitted to the pay or salary of that appointment until he joins it. The officer may in addition be allowed to draw (1) if the special duty involves a decided increase of work or responsibility in comparison with the duties of his regular appointment, a deputation (duty) allowance, (2) if, the special duty involves a change of station, a deputation (local) allowance. ..."

11. The instructions/orders issued from time to time on the subject of 'Transfer of Central Government employees to other Government Departments, Companies, Corporations etc. Deputation (Duty) Allowance' were consolidated in Govt. of India, Ministry of Finance No. I(II)E.III(B)/75, dated the 7th November, 1975 (reproduced in Appendix 31 - printed in Volume IV (Appendices) of Chaudri's Compilation of the Civil Service Regulations - 13th Edition (corrected upto the 1st April, 1986). Para 3.1 of this Appendix which deals with the 'Principles of Admissibility' is reproduced below: -

"3.1. Principles of Admissibility. For purposes of drawing Deputation (duty) allowance, the term 'Deputation' will cover only appointments made by transfer on a temporary basis to other departments and State Governments provided the transfer is outside the normal field of deployment and is in the public interest."

Para 3.3 of the Appendix ibid states that the temporary transfer of employees on foreign service to bodies (whether incorporated or not) wholly or substantially owned or controlled by the Government and also to organisations e.g., Municipalities, Universities etc. shall also be treated as 'deputation' for the purposes of fixing deputation (duty) allowance. On the other

hand, as per para 3.4 of the aforesaid Appendix, appointments of serving Government servants made either by promotion or by direct recruitment in competition with open market candidates, whether on a permanent or temporary basis, will not be regarded as 'deputation' and, as per para 3.5, permanent appointments made by transfer will also not be treated as 'deputation'. Para 3.2 states that the question whether the transfer is outside the normal field of deployment or not will be decided by the authority which controls the service or post from which the employee is transferred. Para 12 states that these orders will apply to all Central Government Servants and employees of State Governments deputed to hold posts in the Central Government except the cases mentioned therein. It is not necessary for the purpose of adjudication of the issues in this application to enumerate the exceptions mentioned in this para, as these are not relevant. Neither party has shown to us any rules / orders specifically applicable to the members of the DANI Civil Service, and, as such, we propose to examine the issues raised in para 8 of this order in the light of these instructions.

12. In the instant case, the applicant was transferred, admittedly on a temporary basis to another department, which in this case will be taken to be an ex-cadre post. The case of the respondent is that the transfer was in the public interest. Therefore, prima-facie it is a case of transfer on deputation; but as per para 3.2 of Appendix 31, referred to above, the authority which controls the DANI Civil Service can alone decide whether the transfer is outside the normal field of deployment or not. In our view, the normal field of deployment of an officer of an organised Service will be transfer to posts which are included in the Service. DANI Civil Service Rules provide for deputation posts in the strength of the Service. Schedule-I of the DANI Civil Service Rules, 1971 was substituted by amendment Notification No.14812/10/87-UTS, dated 7th April, 1989 and the authorised permanent strength of the Service and the nature of posts included in it were shown therein. In the sanctioned strength of 352 posts, 87 posts have been included as 'deputation, leave and training reserve'. In the break-up of 87 posts, 33 posts have been shown as deputation reserve @ 12½% of 265 posts. One can

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argue that because of inclusion of posts for deputation in the strength of the DANI Civil Service, transfer on deputation will be treated as a normal field of deployment and as such, the transfer of the applicant to an ex-cadre post should not be treated as being outside the normal field of deployment. On the other hand, one may argue that the mere fact that certain posts have been included in the strength of the Service as deputation reserves cannot mean that it is not a transfer on deputation and that the deputation (duty) allowance is not payable, if otherwise admissible under the rules / instructions for payment of deputation (duty) allowance. The posts in the deputation reserve may be utilized for posting cadre officers to ex-cadre posts under the cadre controlling authority or for posting on foreign service or for posting to posts under the Central Government. We need to answer the two issues mentioned in para 8 above separately.

13. As regards the first issue whether in the facts and circumstances of the case, transfer of the applicant to an ex-cadre post will be treated as on deputation, it would be reasonable to hold that posting of the applicant to the post of Joint Director (Agricultural Marketing) under the Delhi Administration will be termed as deputation because it is a transfer on temporary basis to another department, and the strength of the DANI Civil Service includes posts on which the officers of the Service can be posted on deputation.

14. For purposes of admissibility of deputation (duty) allowance, it is necessary that the cadre controlling authority, in terms of para 3.2 of the instructions in Appendix 31 ^{ibid}, first decides whether the transfer of the applicant to/post of Joint Director (Agricultural Marketing) should be treated as a transfer outside the normal field of deployment of the applicant as a member of the DANI Civil Service. Further, in accordance with Article 81 of the Civil Service Regulations, it would need to be decided whether the

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transfer involves a decided increase of work or responsibility in comparison with the duties of his regular appointment. If we go by the pleadings of the applicant in this case wherein he has pleaded that there is very little work for him in the post of Joint Director (Agricultural Marketing), this requirement does not appear to be satisfied. However, on both these points, namely, (1) whether the transfer of the applicant to the post of Joint Director (Agricultural Marketing) was outside the field of normal deployment or not, and (2) whether the transfer involved a decided increase of work and responsibility in comparison with the duties of his regular appointment, the respondent will have to consider all the relevant facts and give its findings. If the findings of the respondent on both these points are in the affirmative, the applicant will be entitled to deputation (duty) allowance for the period he worked on the post of Joint Director (Agricultural Marketing).

15. The prayer of the applicant to the effect that the respondents be directed to pay to him Rs. two lakh compensation for damages to reputation on accounts of degradation, demoralisation, humiliation and mental torture or any amount deemed fit, is a claim in the nature of tort, the adjudication of which does not lie within the jurisdiction of the Central Administrative Tribunal as this is not a service matter.

16. In view of the above discussion, we hold and direct as follows: -

- (1) The respondents ^{are} competent, in terms of the DANI Civil Service Rules, 1971 to post a member of this Service, including the applicant, to an ex-cadre post and, therefore, we find no legal infirmity in the transfer order dated 2.2.1988 (Annexure I to the application) passed by the respondent whereby the applicant was transferred from the post of Deputy Director Social Welfare

to the post of Joint Director (Agricultural Marketing); and

(2) the posting of the applicant to the post of Joint Director (Agricultural Marketing), an ex-cadre post so far as the applicant is concerned, will be treated as a transfer on deputation.

(3) The respondents shall decide within a period of two months from the date of receipt of this order whether the transfer of the applicant to the post of Joint Director (Agricultural Marketing) involved deployment of an officer outside his normal field of deployment or not and further whether the transfer involved a decided increase in work and responsibilities of the officer as compared with the work and responsibilities of posts within the regular field of deployment, and if the decision of the respondent on both these points is in the affirmative, it will sanction to the applicant deputation (duty) allowance as per the rules / orders on the subject for the period of his posting as Joint Director (Agricultural Marketing).

(4) The prayer of the applicant for a compensation of Rs. two lakh cannot be considered or accepted in an application under Section 19 of the Administrative Tribunals Act, 1985.

17. The application is accordingly disposed of on the above lines. The parties shall bear their own costs.

Leave 27/9/89
(P.C. JAIN)
MEMBER(A)

Leave 27/9/89
(P.K. KARTHA)
VICE CHAIRMAN (J)